

EXHIBIT 9

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
SUSANNA MIRKIN and BORIS MIRKIN,
Individually and on Behalf of All Others
Similarly Situated,
Plaintiffs,
vs. No. 18 Civ. 2949 (ARR) (RER)
XOOM ENERGY, LLC and XOOM ENERGY
NEW YORK, LLC,
Defendants.

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VIDEOTAPED DEPOSITION OF
SEABRON ADAMSON
Tuesday, November 8, 2022
10:06 a.m.
Veritext
101 Arch Street
Boston, Massachusetts 02110

Laurie K. Langer, RPR

<p>1 A. Well, in a sense, yes, because the, you 2 know -- well, first off, the fix rate is used as, you 3 know, a way of coming up with a reasonable margin that, 4 based on what XOOM itself set rates on. You know, it's 5 not -- it's based on the information available. 6 So one question then comes to, you know, are, is 7 there some reason that, that XOOM would need to charge a 8 higher rate on fixed rate customers? If so I don't 9 really see what it is. 10 MR. WITTELS: Variable. 11 A. Sorry. On variable rate customers. I am -- we 12 don't have any information to, to delve into that. 13 Q. I'm asking conceptually. And it's okay if you 14 are not offering this opinion. I'm not saying you 15 should or you shouldn't be. I just want to know in this 16 case are you going to offer an opinion that it is not 17 fair for XOOM to seek a higher margin on variable rates 18 conceptually than it does on fixed rates? 19 A. In this context, yes. Because there is no XOOM 20 provided despite all of the information about how those 21 methods were set of how these margins came up. How 22 these -- how the variable rate margins were determined 23 and that's a reasonable proxy, yes. 24 Q. Are you offering that opinion more broadly, that Page 98</p>	<p>1 that might be a thing. But we -- we haven't seen that 2 here. It was asked, but we haven't seen it. 3 Q. Who asked? 4 A. Well, the discovery request asked for costs and 5 pricing methodologies and stuff. 6 Q. Paragraph 75. It says -- this is towards the 7 bottom, I suppose it's the last sentence. 8 "It appears that XOOM was able to operate and 9 make a reasonable profit selling fixed rate contracts 10 with substantially lower margins than variable 11 contracts, and yet arbitrarily imposed much higher 12 margins on their variable rate customers?" 13 Do you see that? 14 A. Yes. 15 Q. Where does it appear that XOOM was able to 16 operate and make a reasonable profit selling fixed rate 17 contracts with substantially lower margins? 18 A. Well, the margins you can kind of see in the 19 table, the average margins over years. As I say, it 20 appears that they chose to offer those fixed rate 21 margins over a considerable period of time. 22 Q. Uh-huh. 23 A. So they would have had -- XOOM would have had the 24 opportunity to offer if it was saying, "oh, my God, Page 100</p>
<p>1 in all circumstances -- and I'm asking this, to give you 2 some prospective on why I'm asking, because you've done 3 it in two cases now that I know of, set the fixed rate 4 margin as a benchmark. 5 A. Uh-huh. 6 Q. So are you going to offer the opinion that in the 7 ESCO world -- 8 A. Uh-huh. 9 Q. -- it is not appropriate for an ESCO to seek a 10 higher margin for variable rates than it does for fixed 11 rates? 12 MR. WITTELS: Objection. 13 A. I mean, to me the rates have to be set for the 14 contract. The -- the use of fixed rates seemed 15 appropriate for coming up with the reasonable proxy 16 given that, you know, the, the risks associated with the 17 variable rates in general would be similar or probably 18 lower. If you say that there are other fixed costs it's 19 hard to see why they are different. We never saw 20 anything in this case saying, demonstrating why there 21 would be a difference between the two. If someone could 22 present, you know, compelling economic evidence that 23 says, "by God, I can prove to you that the costs of 24 variable rate is completely different than fixed rate" Page 99</p>	<p>1 we're losing tons of money on all of our variable 2 customers -- I mean, our fixed rate plans that could 3 have been adjusted." 4 But we don't -- as I mentioned before we don't 5 have contract by contract P & Ls, for example. 6 Q. Right. So I think we're saying the same thing. 7 Your table 1 reflects gross margin for fixed rate 8 customers; right? 9 A. Yes. 10 Q. Okay. 11 A. I think so, yes. 12 Q. But you don't know whether -- 13 VIDEOGRAPHER: I'm sorry. I didn't hear 14 that. You're hitting the microphone. 15 A. Oh, I'm sorry. 16 VIDEOGRAPHER: Bring it up a little higher. 17 A. How is that? Is that better? 18 VIDEOGRAPHER: Great. Thank you. 19 A. Okay. Thank you. Sorry. 20 Q. That's okay. But you don't know if XOOM actually 21 made a net profit on those same customers? 22 A. No, we don't have -- we don't have customer 23 segment level profit and loss data. 24 Q. Okay. In the -- circling back to the Richards Page 101</p>

<p>1 their retail business.</p> <p>2 Q. Okay. Well, I guess --</p> <p>3 A. For example, a bunch of the Texas companies have</p> <p>4 retail supply businesses. We did a little bit on that,</p> <p>5 but not a major thing. But a bunch of the Texas</p> <p>6 companies had retail supply businesses that also had</p> <p>7 substantial other businesses.</p> <p>8 Q. I think I understand what you're saying. And you</p> <p>9 didn't work for the retail side of their businesses, you</p> <p>10 worked for the other side of their businesses?</p> <p>11 A. Or sometimes we would be hired on some kind of</p> <p>12 corporate strategy type engagement, which might be</p> <p>13 pretty broad.</p> <p>14 Q. Got it. Okay. I thank you for your time and</p> <p>15 your patience with me.</p> <p>16 MR. MATTHEWS: I'll pass the witness.</p> <p>17 A. Thank you.</p> <p>18 Q. Yes, sir.</p> <p>19</p> <p>20 EXAMINATION</p> <p>21</p> <p>22 BY MR. WITTELS:</p> <p>23 Q. Mr. Adamson, I just really have one question for</p> <p>24 you. You were asked by counsel for XOOM about whether</p> <p style="text-align: right;">Page 138</p>	<p>1 XOOM or some broad question.</p> <p>2 Q. And the answer was?</p> <p>3 A. I believe he said yes, they were, they were both</p> <p>4 profitable. Both fixed rate and variable rate were</p> <p>5 profitable.</p> <p>6 Q. Okay. I have no further questions at this time.</p> <p>7 Thanks.</p> <p>8 MR. MATTHEWS: Thanks very much.</p> <p>9 A. Thank you.</p> <p>10 VIDEOGRAPHER: The time is 2:39, we are off</p> <p>11 the record.</p> <p>12 COURT REPORTER: And, Mr. Matthews, your</p> <p>13 order?</p> <p>14 MR. MATTHEWS: My order is an expedited</p> <p>15 transcript, just, I don't need any print copies.</p> <p>16 Electronic only. PDF exhibits.</p> <p>17 COURT REPORTER: Expedite by Friday?</p> <p>18 MR. MATTHEWS: Yes.</p> <p>19 (Whereupon, the deposition concluded at</p> <p>20 approximately 2:39 p.m.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: right;">Page 140</p>
<p>1 the company was able to make any profits on its fixed</p> <p>2 rate customers; do you remember that question?</p> <p>3 A. Yeah. Not in exact wording, but I remember the</p> <p>4 question.</p> <p>5 Q. Yeah. And did you ask me to, whether you could</p> <p>6 go back and review your report when we had a break?</p> <p>7 A. Yeah, well -- yes, we were discussing the report.</p> <p>8 Q. And did you reread paragraph 57?</p> <p>9 A. Yes.</p> <p>10 Q. And does that answer the question of whether XOOM</p> <p>11 made money and was profitable on its fixed rate</p> <p>12 customers?</p> <p>13 MR. MATTHEWS: Objection. Leading.</p> <p>14 A. Well, I just -- it just reminded me there was</p> <p>15 a -- I had said that there was not a specific P&L, this</p> <p>16 was a reference in the report to deposition testimony</p> <p>17 from a XOOM witness about the profitability of this.</p> <p>18 Q. And what did your report find and state?</p> <p>19 A. I don't remember exactly how he worded it. I</p> <p>20 think there had been a, in the deposition there was a</p> <p>21 question about, it was around, I don't have the</p> <p>22 transcript in front of me, of course, of the deposition,</p> <p>23 but it was something around the line of were -- were a</p> <p>24 fixed rate -- were fixed rate customers profitable for</p> <p style="text-align: right;">Page 139</p>	<p>1 CERTIFICATE</p> <p>2</p> <p>3 COMMONWEALTH OF MASSACHUSETTS</p> <p>4 SUFFOLK, ss.</p> <p>5</p> <p>6 I, Laurie Langer, Registered Professional Reporter</p> <p>7 and Notary Public in and for the Commonwealth of</p> <p>8 Massachusetts, do hereby certify that the witness whose</p> <p>9 deposition is hereinbefore set forth, was duly sworn by</p> <p>10 me and that such deposition is a true record of the</p> <p>11 testimony given by the witness.</p> <p>12</p> <p>13 I further certify that I am neither related to or</p> <p>14 employed by any of the parties in or counsel to this</p> <p>15 action, nor am I financially interested in the outcome</p> <p>16 of this action.</p> <p>17</p> <p>18 In witness whereof, I have hereunto set my hand and</p> <p>19 seal this 11th day of November, 2022.</p> <p>20</p> <p>21 </p> <p>22 NOTARY PUBLIC</p> <p>23 Commission Expires</p> <p>24 7/27/2023</p> <p style="text-align: right;">Page 141</p>